

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

TATYANA LYSYY, married, VASILII
LYSYY, married who are each members of a
marital community,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AND DEUTSCHE BANK
NATIONAL TRUST COMPANY trustee,
a foreign corporation, IMPAC SECURED
ASSETS CORP 2005-62, MORTGAGE
PASSTHROUGH CERTIFICATES
SERIES 2007-1, a foreign corporation;
QUALITY LOAN SERVICE OF
WASHINGTON; PMC BANCORP, a
foreign corporation and national
association; BANK OF AMERICA, NA.
Successor by Merger to BAC Home
Loans Servicing, LP fka Countrywide
Home Loans Servicing LP ("Bank of
America") a national association and
foreign corporation;
MERSCORP Holdings, Inc., a foreign
corporation; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
foreign corporation; SELECT
PORTFOLIO SERVICING, INC., a
foreign corporation; SAFEGUARD
PROPERTIES, LLC, a foreign

No. 2:24-cv-00062-MJP

DEFENDANTS' MOTION IN LIMINE

1 corporation; RESIDENTIAL REAL
2 ESTATE REVIEW, INC, a foreign
3 corporation; MORTGAGE STANLEY

4 PRIVATE BANK, NA, a foreign corporation,
5 E*TRADE, a foreign corporation.

6 Does 1-20,

7 Defendants.

8 I. INTRODUCTION

9 Defendants, Deutsche Bank National Trust Company, as trustee, on behalf of the holders
10 of the Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-1 (the
11 “Trust”), Select Portfolio Servicing, Inc. (“SPS”), Safeguard Properties Management, LLC
12 (“Safeguard”) and Residential RealEstate Review, Inc. (“RRR”) (collectively “Defendants” or the
13 “moving Defendants”), respectfully request that Plaintiffs be limited to calling themselves at trial.
14 Despite that this action has been pending for almost *three years*, Plaintiffs have named no
15 witnesses in discovery responses and in their May 20, 2024 FRCP 26(a)(1)(A) disclosure,
16 Plaintiffs named only themselves as witnesses. Plaintiffs also produced no expert reports and
17 served no FRCP 26(a)(2) expert disclosure. As a result, pursuant to FRCP 37, the Court should
18 limit Plaintiffs’ trial witnesses to themselves. *See* FRCP 37(b)(2)(A), (c)(1), (d)(1).

19 II. STATEMENT OF FACTS

20 On July 20, 2022, almost three years ago, Plaintiffs initiated the present removed action.
21 Dkt No. 1.2. After two summary judgment motions, on February 20, 2025, Plaintiffs’ only pending
22 claims are for the alleged violation of the automatic stay and for quiet title. *See* Dkt Nos. 1.3, 54,
23 67, 100. The trial is currently set for Jun 23, 2025.

24 Despite this action pending for almost three years, Plaintiffs refused to answer Defendants’
25 discovery responses. *Sagara Dec.*, ¶3, Ex. A. Plaintiffs served no expert reports or FRCP 26(a)(2)

1 expert disclosure. *Id.*, ¶4. On May 20, 2024, Plaintiffs served their FRCP 26(a)(1)(A) disclosure
2 and named only themselves as witnesses. *Id.*, ¶5, Ex. B.

3 **III. STATEMENT OF ISSUES**

4 Whether the Court should limit Plaintiffs' witnesses at trial.

5 **IV. EVIDENCE RELIED UPON**

6 A. Declaration of Midori R. Sagara; and

7 B. The pleadings and records filed in this action.

8 **V. ARGUMENT**

9 **A. Motions in Limine**

10 A motion in limine is a procedural mechanism to limit in advance testimony or evidence
11 in a particular area...so that admissibility is settled before attempted use of the evidence.” *United*
12 *States v. Heller*, 551 F.3d 1108, 1111–12 (9th Cir. 2009). While the Federal Rules of Evidence do
13 not explicitly permit motions in limine, they are a part of a “district court's inherent authority to
14 manage the course of trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4, 105 S.Ct. 460, 83 L.Ed.2d
15 443 (1984). A motion in limine is granted if the evidence at issue is inadmissible on all potential
16 grounds. *See Quintero v. Nat. Railroad Passenger Corp.*, No. 3:20-cv-05677-TL, 2022 WL
17 4093120, at *1 (W.D. Wash. Sept. 7, 2022), *citing United States v. Sims*, 550 F. Supp. 3d 907, 912
18 (D. Nev. 2021).

19 **B. Plaintiffs Should be Limited to Calling Themselves at Trial.**

20 In the almost three years this action has been pending, Plaintiffs have disclosed only
21 themselves as witnesses. Under FRCP 37, Plaintiffs should be precluded from calling any other
22 witnesses, lay or expert, due to improper and untimely disclosure—specifically, Vasiliy Mudrenko
23 and Peter Kuzmenko. *Sagara Dec.*; *see* FRCP 37(b)(2)(A), (c)(1), (d)(1). Based on Defendants'
24 investigation, Defendants anticipate that Plaintiffs will attempt to call Vasiliy Mudrenko as a
25

1 contracting expert and Peter Kuzmenko as a real estate expert to support a claimed damages theory.
2 Mr. Mudrenko and Mr. Kuzmenko's anticipated testimony relate to the pre-existing damage to the
3 subject residence and the claimed worsening of the damage as a result of Defendants' conduct.
4 Plaintiffs may argue that because of the claimed worsening in damage, they were unable to return
5 to, rent out and/or sell the subject property. However, in its February 20, 2025 Order, the Court
6 precluded such anticipated testimony and argument by excluding "actual damages arising from (a)
7 loss or damage to personal property and (b) loss of ability to use, rent out, or sell the Property."
8 Dkt No. 100, at 23: 8-12. Mr. Mudrenko and Mr. Kuzmenko's testimony would be irrelevant. *See*
9 ER 401-403. Further, no foundation has been established for Mr. Mudrenko and Mr. Kuzmenko
10 to testify as experts, or even as lay witnesses to provide opinion testimony. *See* ER 701-703.

11 VI. CONCLUSION

12 The Court should grant the present Motion in Limine. Plaintiffs should be limited to calling
13 themselves at trial.

14 I certify that this memorandum contains 1,004 words, in compliance with the Local Civil
15 Rules.

16 DATED this 19th day of May, 2025.

17 BUCHALTER

18
19 By: /s/ Midori R. Sagara
20 Midori R. Sagara, WSBA #39626

21 *Attorneys for Defendants Deutsche Bank*
22 *National Trust Company, as trustee, on behalf*
23 *of the holders of the Impac Secured Assets*
24 *Corp. Mortgage Pass-Through Certificates*
25 *Series 2007-1, Select Portfolio Servicing, Inc.,*
26 *Safeguard Properties, LLC, and Residential*
RealEstate Review, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2025, I caused to be served a copy of the foregoing on the following persons in the manner indicated below at the following address:

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